

Internal Revenue Service
Regional Commissioner

Department of the Treasury

Date: MAY 11 1984

CERTIFIED MAIL

Employer Identification Number:

Form Number:

1023

Tax Years:

Key District:

Person to Contact:

Contact Telephone Number:

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reason(s):

Individual artists are being directly benefited by the exhibition and sale of their works, with the result that a major activity of your organization is serving the private interests of those artists whose works are displayed for sale.

Accordingly, your organization is not operated exclusively for educational purposes and thus does not qualify for exemption under Section 501(c)(3).

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the form indicated above. Based on the financial information you furnished, it appears that returns should be filed for the above years. You should file these returns with your key District Director, EP/EO Division, within 30 days from the date of this letter, unless a request for an extension of time is granted. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under Code section 7428. You should file returns for later tax years with the appropriate service center shown in the instructions for those returns.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

(over)

Letter 1371(RO) (1-80)

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

A solid black rectangular box used to redact the signature of the official.

Chief, St. Paul Appeals Office

CERTIFIED MAIL

13 JUL 1983

Dear Applicant:

We have considered your application for recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code of 1954.

The information submitted discloses that you were incorporated on [REDACTED] under the nonprofit corporation laws of the State of [REDACTED].

You were formed for the purpose to increase the visibility of the visual artists in the community, to provide a center around which artists and supporters of the arts can share information and ideas, and develop projects and programs beneficial to themselves and the community.

You conducted workshops using both local artist and artists brought in from outside the community. From May through December, monthly art exhibits are shown by regional artists (both [REDACTED] members and non-members), and are displayed at your building.

The criteria used in the selection of works for display, etc., is that they must be original and complete. Selection of works for sale or display is by the exhibitions committee (all of which are your members) using guidelines set up by your general membership. The exhibitions committee is also in charge of displaying accepted works. All pricing is done by the individual submitting the work. The percentage taken from the sales price of member's painting is set by the general membership.

Section 501(c)(3) of the Code provides for the exemption from Federal Income Tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1 of the Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows.

"(a) Organizational and operational tests. (1) In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. (2) The term 'exempt purpose or purposes', as used in this section, means any purpose or purposes specified in Section 501(c)(3) . . ."

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Date	5/27/83	5/27/83	6-27-83	6-27-83	6/28/83		

[REDACTED]

"(b) Operational test. (1) Primary activities. An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. (2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals . . ."

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in Section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either organizational or the operational test it is not exempt.

Section 1.501(c)(3)-1(e)(1) of the Income Tax Regulations provides that "an organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). . . An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under Section 501(c)(3) to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 71-395, 1971-2 C.B. 228, provides that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under Section 501(c)(3) of the Code. The rationale used is that such a gallery is a vehicle for advancing the careers and promoting the sales of the works of the member artists. The gallery thus serves the private purpose of its members, which is not an exempt purpose.

Revenue Ruling 76-152, 1976-1 CB 152, which reads in part, as follows:

A group of "art patrons" formed an organization to promote community understanding of modern art trends. Its sole activity was the selecting of modern art works of local artists for exhibit at its gallery and for possible sale. The artist's work was displayed on a consignment basis with the artist setting the selling price.

As is the case in Revenue Ruling 71-395, the artists in the subject case are being directly benefitted by the exhibition and sale of their works, with the result that a major activity of the organization is serving the private interests of those artists whose works are displayed for sale. Since ninety percent of all sales proceeds are turned over to the individual artists, such direct benefits are substantial by any measure and the organization's provision of them cannot be dismissed as being merely incidental to its other purposes and activities. The fact that the artists have no control over the selection of their works for display does not change this conclusion.


As your organization is operating in the same manner as the organization cited in the above Revenue Rulings we therefore have determined based on the information furnished, your organization is not organized and operated for 501(c)(3) purposes, since you are a vehicle for advancing the careers and promoting the sales of the works of the member artists thus the organization serves the private purpose of its members, which is not an exempt purpose.

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Code, since you are not organized and operated exclusively for charitable, religious, or other exempt purpose within the meaning of Section 501(c)(3).

You are required to file Federal Income Tax Returns.

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(a) of the Code.

If you do not agree with these conclusions, you may within thirty days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after you have submitted your brief to the Chicago District Office and we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 892, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.



If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Please keep this determination letter in your permanent records.

If you agree with this determination, please sign and return the enclosed Form 6018.

Sincerely yours,



District Director

Enclosures:
Publication 892
Form 6018